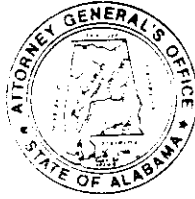


# OFFICE OF THE ATTORNEY GENERAL

92-00100



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ATTORNEY GENERAL  
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DEC 20 1991

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City of Huntsville  
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Municipalities - Redistricting  
- Municipal Ordinances

The City Council of Huntsville is not authorized by state law to adopt a redistricting plan providing for more than five single-member city council districts.

Dear Mr. Blankenship:

This opinion is issued in response to your request for an opinion from the Attorney General.

## QUESTION

Whether the City Council for the City of Huntsville, Alabama, is authorized by state law to adopt a redistricting plan providing for more than five (5) single-member council and school board districts?

The operative issue is apparently whether Act No. 87-191 (codified as Section 11-43-63, Ala. Code 1975) is applicable to the City of Huntsville, in that it applies

only to "[a]ny city or town council of this state not currently electing its members from single-member districts pursuant to state law . . ." The City of Huntsville is currently and has, since 1988, elected its council members pursuant to Act No. 738, as amended by the Federal Court Order, providing for five (5) single-member council districts.

#### FACTS, LAW AND ANALYSIS

A Class 3 municipality pursuant to Code of Alabama 1975, § 11-40-12 has a population of not less than 100,000 and not more than 174,999 inhabitants. The City of Huntsville is a Class 3 municipality.

Act No. 87-191 is codified at Code of Alabama 1975, § 11-43-63. This provision states in pertinent part:

"Any city or town council of this state not currently electing its members from single-member districts pursuant to state law may, not less than six months prior to the regular general municipal election, by ordinance adopted by a majority of the membership of the council, divide the municipality into single-member districts (wards) of not less than five nor more than seven districts (wards). Provided, however, that the number of districts (wards) in any Class 1, 2 or 3 municipality may not exceed nine districts (wards)." (Emphasis added.),

Act No. 738, Acts of Alabama 1971, p. 1453 provided that cities with a population of not less than 135,000 nor more than 185,000 inhabitants are to be governed by a mayor and five councilmen who were elected at large. When enacted, Act No. 738 applied to the City of Huntsville.

On June 2, 1988, the United States District Court for the Northern District of Alabama entered an order in Grayson v. Madison County, Civil Action 84-V-5770-NE, which divided the City of Huntsville into five city council and board of education districts with the council and board members elected

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from single-member districts. The court order did not provide that alteration of the number of city council districts for Huntsville is permissible.

The City of Huntsville is a Class 3 municipality which elects its city council members from single-member districts pursuant to Act No. 738, as amended by a federal court order issued subsequently to the enactment of Act No. 87-191 (§ 11-43-63).

As to whether the City of Huntsville may increase the number of its council districts under § 11-43-63, in City of Birmingham v. Graffeo, 551 So.2d 357 (Ala. 1989), the Alabama Supreme Court held that the Legislature when enacting § 11-43-63 (Act No. 87-191) intended for its provisions to apply to each city and town in the state and, therefore, the Legislature intended to amend the mayor-council act of the City of Birmingham. The mayor-council act of the City of Birmingham was a pre-Peddycoart general act of local application, as was Act No. 738. The Court in the Birmingham decision stated that § 11-43-63 "explicitly allows a city by the vote of its city council to change from the at-large election of city council members to election in single member districts." (Emphasis added.)

It is clearly indicated by the wording of § 11-43-63 and by the Alabama Supreme Court's construction that § 11-43-63 is only applicable to those municipalities which have the at-large method of electing city council members and which wish to change to electing these officers from single-member districts. The City of Huntsville, a Class 3 municipality, which subsequently to the enactment of § 11-43-63 changed to a single-member district election of city council members, cannot under that provision, increase the number of single-member districts for its city council.

Code of Alabama 1975, § 11-43-40 provides for the election of governing bodies of cities operating under a mayor-council form of government to allow eight single-member districts and one at-large district. Since the federal court order provides for election by single-member districts only and the city stated its desire not to proceed under this section, we express no opinion on the applicability of this provision to the City of Huntsville.

Regarding the school board districts of the City of Huntsville, pursuant to Act No. 796, Acts of Alabama 1971, p. 1530, boards of education in cities with a population of not

less than 70,000 nor more than 300,000 were to be composed of five members elected at large. This act became applicable to the City of Huntsville after an election held for that purpose. In Grayson v. Madison County, supra, the U. S. District Court ordered that the Huntsville City Board of Education, as the Huntsville City Council, was to be divided into five single-member districts, such districts for the board of education and city council being the same.

Furthermore, state general law provides that city boards of education are to be composed of five members. Code of Alabama 1975, § 16-11-2, and opinion of the Attorney General to Honorable Al Knight, Member, House of Representatives, dated April 18, 1991.

There is no general law which allows a city or its board of education to change the composition or method of electing the board. Furthermore, federal court order requires that the members of the board of education be elected from the same single-member districts as the city council in the City of Huntsville. Thus, any alteration of the composition of the city council or board of education would affect the other and would violate the federal court order and state law.

Act No. 88-811 provides that the Huntsville City Board of Education may agree with the Huntsville City Council to qualify, run, and be elected from the same districts, and the board and city council may also jointly agree to have five or more districts. Act No. 90-283 provides that the Huntsville Board of Education shall be elected from districts and that the number of districts shall be the same as the number of districts for the Huntsville City Council. While statutes are presumed to be constitutional until declared otherwise by a court of law, there is a strong presumption that Act No. 88-811 and Act No. 90-283 violate Section 104 and Section 105 of the Constitution of Alabama, 1901 and are unconstitutional. Thus, these Acts will not be considered here.

#### CONCLUSION

The City Council of Huntsville is not authorized by state law to adopt a redistricting plan providing for more than five single-member city council and school board districts. Legislation would be required to allow the council to provide for more than five single-member districts and this legislation

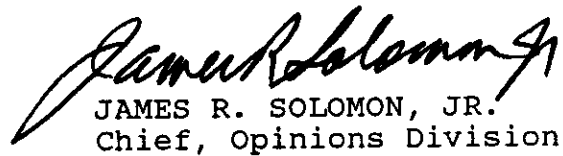
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would have to be precleared by the Justice Department under the Voting Rights Act before implementation.

I hope this sufficiently answers your question. If our office can be of further assistance, please do not hesitate to contact us.

Sincerely,

JIMMY EVANS  
Attorney General  
By:



JAMES R. SOLOMON, JR.  
Chief, Opinions Division

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